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Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS-SC-21-0069; SC21-927-1 FR]

Pears Grown in Oregon and Washington; Increased Assessment Rate for Fresh Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Fresh Pear Committee (Committee) to increase the assessment rate established for the 2021-22 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Dale Novotny, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503)326-2724, or Email: DaleJ.Novotny@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington. Part 927 (referred to as the

“Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The Committee locally administers the Order and is comprised of growers and handlers of pears operating within the production area, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, Oregon and Washington fresh pear handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate be applicable to all assessable fresh pears for the 2021-22 fiscal period, and continue unless amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject

to an order may file with Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Members are familiar with the Committee's needs and with the costs of goods and services in their local area, and are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

This final rule increases the assessment rate from \$0.463 per 44-pound standard box or equivalent of fresh "summer/fall" and "winter" pears, the rate that was established for the 2018-19 and subsequent fiscal periods, to \$0.468 per 44-pound standard box or equivalent of assessable fresh "summer/fall" pears and "winter" pears for the 2021-22 and subsequent fiscal periods.

For the 2018-19 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.463 per 44-pound standard box or equivalent of assessable fresh "summer/fall" pears and "winter" pears. That assessment rate continued in effect from fiscal period to fiscal period unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 3, 2021, and unanimously recommended expenditures of \$8,472,263 and an assessment rate of \$0.468 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears handled for the 2021-22 and subsequent fiscal periods. In comparison, last year’s budgeted expenditures were \$8,901,114. The assessment rate of \$0.468 is \$0.005 higher than the rate previously in effect. The Committee recommended increasing the assessment rate due to a smaller estimated 2021 crop and to provide adequate income, along with reserve funds and interest income, to cover all of the Committee’s budgeted expenses for the 2021-22 fiscal period.

Major expenditures recommended by the Committee for the 2021-22 fiscal period include \$391,047 for contracted administration, \$159,540 for industry development, \$964,476 for production research and market development, \$27,200 for miscellaneous expenses, and \$6,930,000 for promotion and paid advertising for “summer/fall” and “winter” varieties of fresh pears. Budgeted expenses for these items for the 2020-21 fiscal period were \$388,520, \$172,000, \$997,394, \$28,200, and \$7,315,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, and an estimated 2021 crop of 18,000,000 44-pound standard boxes or equivalent of assessable fresh “summer/fall” pears and “winter” pears. Income derived from handler assessments, calculated at \$8,424,000 (18,000,000 standard boxes or equivalent multiplied by \$0.468 assessment rate), along with reserve funds and interest income (\$48,263), will be adequate to cover budgeted expenses of \$8,472,263.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a

budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2021-22 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order to ensure that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 708 growers of fresh pears in the production area and 27 handlers subject to the regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service, the 2020 average grower price received for fresh pears produced in Oregon and Washington was \$11.39 per standard 44-pound box or equivalent. Committee data indicates total production was

16,290,225 44-pound standard boxes or equivalent in the 2019-20 fiscal period. The total 2019-20 fiscal period value of assessable fresh “summer/fall” and “winter” pears grown in Oregon and Washington was \$185,545,663 (16,290,225 44-pound standard boxes or equivalent times \$11.39 per box equals \$185,545,663). Dividing the crop value by the estimated number of growers (708) yields an estimated average receipt per grower of \$262,070.

According to AMS Market News data, the reported average terminal price for 2020 Oregon and Washington fresh pears was \$34.87 per 44-pound standard box or equivalent (data reported in 4/5 bushel). Multiplying the Committee-reported 2019-20 Oregon and Washington total production of 16,290,225 44-pound standard boxes or equivalent by the estimated average price per box or equivalent of \$34.87 equals \$568,040,146. Dividing this figure by 27 regulated handlers yields estimated average annual handler receipts of \$21,038,524. Therefore, using the above data, the majority of growers and handlers of Oregon and Washington fresh pears may be classified as small entities.

As noted above, the average price received by growers in the 2019-20 crop year was \$11.39 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears. Given the Committee-estimated production of 18,000,000 44-pound standard boxes or equivalent of assessable fresh pears for the 2021-22 crop year, the total grower revenue is estimated to be \$205,020,000. The total assessment revenue is expected to be \$8,424,000 (18,000,000 boxes multiplied by \$0.468 per box). Thus, the total assessment revenue compared to total grower revenue is 4.1 percent (\$8,424,000 divided by \$205,020,000).

This rule increases the assessment rate collected from handlers for the 2021-22 and subsequent fiscal periods from \$0.463 to \$0.468 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears. The Committee

unanimously recommended 2021-22 fiscal period expenditures of \$8,472,263 and an assessment rate of \$0.468 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears handled. The assessment rate of \$0.468 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears is \$0.005 higher than the rate previously in effect. The volume of assessable fresh “summer/fall” pears and “winter” pears in the production area for the 2021-22 fiscal period is estimated to be 18,000,000 44-pound standard boxes or equivalent. Thus, the \$0.468 per 44-pound standard box or equivalent of assessable fresh “summer/fall” pears and “winter” pears assessment rate should provide \$8,424,000 in assessment income (18,000,000 multiplied by \$0.468). Income derived from handler assessments, along with reserve funds and interest income, will be adequate to cover budgeted expenses for the 2021-22 fiscal period.

Major expenditures recommended by the Committee for the 2021-22 fiscal period include \$391,047 for contracted administration, \$159,540 for industry development, \$964,476 for production research and market development, \$27,200 for miscellaneous expenses, and \$6,930,000 for promotion and paid advertising for “summer/fall” and “winter” varieties of fresh pears. Budgeted expenses for these items for the 2020-21 fiscal period were \$388,520, \$172,000, \$997,394, \$28,200, and \$7,315,000, respectively.

The Committee recommended increasing the assessment rate due to a smaller crop and to provide adequate income, along with reserve funds and interest income, to cover the Committee’s budgeted expenses for the 2021-22 fiscal period. Prior to arriving at this budget and assessment rate recommendation, the Committee discussed various alternatives, including maintaining the previous assessment rate and increasing the assessment rate by a different amount. However, the Committee determined that the recommended assessment rate, along with reserve funds and interest income, will adequately fund budgeted expenses.

This rule increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Oregon and Washington pear industry. All interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 3, 2021, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189, Fruit Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Oregon and Washington pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

A proposed rule concerning this action was published in the **Federal Register** on November 19, 2021 (86 FR 64830). Copies of the proposed rule were also mailed or sent via e-mail to all fresh pear handlers. A copy of the proposed rule was made available through Internet by AMS and Office of the Federal Register. A 30-day comment period ending December 20, 2021, was provided for interested persons to respond to the proposal. One comment was received in support of the action. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 927 as follows:

PART 927 – PEARS GROWN IN OREGON AND WASHINGTON.

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 927.236, revise the introductory text and paragraphs (a) and (b) to read as follows:

§ 927.236 Fresh pear assessment rate.

On and after July 1, 2021, the following base rates of assessment for fresh pears are established for the Fresh Pear Committee:

(a) \$0.468 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “summer/fall”;

(b) \$0.468 per 44-pound net weight standard box or container equivalent for any or all varieties or subvarieties of fresh pears classified as “winter”; and

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Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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